Supreme Court, U.S.
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No. _____

In The

Supreme Court of the United States

RICHARD MAYS, TRUSTEE, IN HIS OFFICIAL CAPACITY; AND THE YEDEA TRUST,

Petitioners,

vs.

ST. PAT PROPERTIES, LLC; AND CHARLIE DANIELS, STATE LAND COMMISSIONER,

Respondents.

On Petition For Writ Of Certiorari To The Supreme Court Of Arkansas

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

Does the Due Process Clause of the Fourteenth Amendment to the United States Constitution require a state agency that has taken ownership of a resident taxpayer's real property, and has access to the taxpayer's correct address, to notify the taxpayer at that correct address before the state agency sells the property at a public auction?

PARTIES TO THE PROCEEDING

The parties to the proceeding are:

RICHARD MAYS, an individual in his official capacity as trustee of the Yedea Trust;

THE YEDEA TRUST, a trust established by Woodson Walker in the early 1980's for his then minor children. Woodson Walker named Richard Mays trustee of the trust;

ST. PAT PROPERTIES, LLC, an Arkansas limited liability company;

CHARLIE DANIELS, Commissioner of State Lands for the State of Arkansas.

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CITATIONS OF REPORTS OF OPINIONS ENTERED IN THE CASE

Mays v. St. Pat Properties, LLC, No. 03-798 (Ark. filed May 20, 2004) ___ Ark. ___, ___ S.W.3d ___ (2004) Appendix A-1.

BASIS FOR SUPREME COURT JURISDICTION

The Supreme Court of Arkansas entered its judgment on May 20, 2004. Appendix A-1. Petitioners Richard Mays and the Yedea Trust seek review of that judgment on a writ of certiorari. The present petition has been filed within ninety days of May 20, 2004 as required by 28 U.S.C. § 2101(c) (2000) and Rule 13.1 of this Court.

This Court has jurisdiction under 28 U.S.C. § 1257(a) (2000) to review on a writ of certiorari a final judgment rendered by the highest court of a State where the validity of a statute of a State is drawn into question on the ground of its being repugnant to the Constitution of the United States.

CONSTITUTIONAL PROVISIONS INVOLVED IN THE CASE

" . . . No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law . . . " U.S. Const. amend. XIV, § 1.

STATE STATUTORY PROVISIONS INVOLVED IN THE CASE

Ark. Code Ann. § 26-37-101 (LEXIS 2000)

Ark. Code Ann. § 26-37-103 (LEXIS 2000)

Ark. Code Ann. § 26-37-301 (LEXIS 2000)

STATEMENT OF THE CASE

In the early 1980's, Woodson Walker ("Mr. Walker"), an attorney in Little Rock, Arkansas, established a trust for his minor children called the Yedea Trust. Appendix A-1. Mr. Walker named Richard Mays ("Mr. Mays"), Co-Petitioner herein, trustee of the Yedea Trust. Appendix A-1. In 1989, the trust acquired a tract of land in Little Rock, Arkansas. Appendix A-1. The trust recorded the deed to the property and listed the record owner as, "Yedea Trust, Richard Mays, trustee, c/o Walker, Roaf, Campbell, Ivory & Dunklin, 1 Union National Plaza, #990, Little Rock, Arkansas 72201. Appendix A-1. The address listed on the deed was the address of Mr. Walker's law firm. Appendix A-2. In 1998, Mr. Walker and his law firm moved from 1 Union National Plaza to 217 West Second Street in Little Rock. Appendix A-2. On January 29, 1998, Mr. Walker notified the Pulaski County Collector ("County Collector") of his law firm's new address and requested that the office update the address of the Yedea Trust to reflect his law firm's new address. Appendix A-2, A-7, A-8. Pursuant to Mr. Walker's request, the County Collector changed the address of the trust to 217 West Second Street. Appendix A-7, A-8.

For the years 1996, 1997, and 1998, taxes were not paid on the Yedea Trust property. Appendix A-1, A-2. On

February 22, 1999, the County Collector, acting pursuant to Ark. Code Ann. §§ 26-37-101, 26-37-103, sent a certified list to the Commissioner of State Lands ("Land Commissioner"), Co-Respondent herein, of properties for which taxes were delinquent. Appendix A-2, A-32, A-33. The Yedea Trust property was on that list. Appendix A-2. On April 29, 1999, the Land Commissioner, acting pursuant to Ark. Code Ann. § 26-37-301, sent a letter by certified mail, return receipt requested to the address provided by the County Collector indicating that the property would be sold at a public auction on May 1, 2001 if all taxes, penalties, interest, and costs were not paid by that date. Appendix A-2, A-33, A-34. Although the County Collector had changed the trust's address to 217 West Second on January 29, 1998, the address on the list the Collector certified to the Land Commissioner listed the trust address as 1 Union National Plaza. Appendix A-2, A-7, A-8. On May 3, 1999, the Land Commissioner's letter was delivered to 1 Union National Plaza. Appendix A-2. The letter was not delivered to Mr. Mays, however. Appendix A-2, A-11. Someone signed for the letter and in so doing, forged the name of a former law partner of Mr. Walker. Appendix A-2, A-11.

On April 23, 2001, the Land Commissioner published a notice in the *Arkansas Democrat-Gazette* newspaper indicating that the property would be sold at a public auction on May 1, 2001. Appendix A-2. On May 1, 2001, St. Pat Properties, LLC ("St. Pat"), Co-Respondent herein, purchased the property for $19,081.16. Appendix A-2, A-3. The Land Commissioner issued a limited warranty deed to St. Pat which St. Pat recorded on June 12, 2001. Appendix A-3. On June 28, 2001, St. Pat filed a petition to quiet title to the property in the state trial court. Appendix A-3. On February 23, 2002, Mr. Mays and the Yedea Trust filed a

petition to set aside the Land Commissioner's sale to St. Pat and to quiet title to the property in the Yedea Trust. Appendix A-3. On September 20, 2002, Mr. Mays and the Yedea Trust amended their petition to set aside the sale and to quiet title. Appendix A-3, A-24-A-31. In their amended pleading, Mr. Mays and the Yedea Trust alleged that Arkansas statute 26-37-301 as applied in this case violated the Due Process Clause of the Fourteenth Amendment to the United States Constitution because it did not provide for adequate notice to the delinquent taxpayer prior to the State confiscating the taxpayer's property. Appendix A-27.

The state trial court consolidated the two causes of action and conducted a non-jury trial on October 2, 2002. Appendix A-3. On December 12, 2002, the trial court issued a letter ruling denying the petition to set aside the sale and quiet title filed by Mr. Mays and the Yedea Trust. Appendix A-3, A-19-A-23. The trial court expressly rejected Mr. Mays and the Yedea Trust's contention that Ark. Code Ann. § 26-37-301 as applied in this case violated the Due Process Clause of the Fourteenth Amendment to the United States Constitution. Appendix A-3, A-22. The trial court held that notwithstanding the fact that the County Collector provided the Land Commissioner the wrong address for the trust, the Land Commissioner did all it was required to do under Ark. Code Ann. § 26-37-301 because the statute did not require the Land Commissioner to verify the accuracy of the addresses certified to it by the County Collector. Appendix A-3, A-20-A-23. On December 31, 2002, the trial court entered a judgment in favor of St. Pat. Appendix A-3, A-13-A-18. The judgment also contained the trial court's rejection of Mr. Mays and the Yedea Trust's "as applied" Fourteenth Amendment Due

Process challenge. Appendix A-3, A-17. Mr. Mays and the Yedea Trust appealed the trial court's ruling to the Supreme Court of Arkansas. Appendix A-3.

The Supreme Court of Arkansas affirmed the trial court in all respects, including the rejection of Mr. Mays and the Yedea Trust's Fourteenth Amendment Due Process challenge. Appendix A-3-A-10. The Supreme Court of Arkansas did not dispute the fact that the County Collector had the correct address for the Yedea Trust, but certified the wrong address to the Land Commissioner. Appendix A-4-A-8. The Arkansas high court held that notwithstanding an admitted bureaucratic bungle, Mr. Walker was not entitled to redeem his property. Appendix A-4-A-8. In reaching this conclusion the Arkansas high court erroneously charged that Mr. Walker did not provide the County Collector a current address. Appendix A-9, A-10. This is belied not only by the record of this case, but by testimony from an employee of the County Collector that the Arkansas high court cited in its opinion. Appendix A-7, A-8. The employee clearly stated the County Collector's office changed the trust's address from 1 Union National Plaza to 217 West Second on January 29, 1998. Appendix A-7, A-8. It is axiomatic that the County Collector would not have known this address but for Mr. Walker's notifying that office of the address change.

The Supreme Court of Arkansas' decision conflicts with two bedrock Fourteenth Amendment Due Process cases of this Court, *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306 (1950) and *Mathews v. Eldridge*, 424 U.S. 319 (1976). Under *Mullane*, the County Collector and the Land Commissioner had a duty to notify the trustee of the Yedea Trust at the correct address as supplied by Mr. Walker and neither did. Under *Mathews*, sufficient post-deprivation procedures needed to be in place

to cure a wrongful taking of a taxpayer's property, and here, no post-deprivation procedure exists at all despite the admitted errors by state actors. Leaving the result of the Supreme Court of Arkansas undisturbed will lead to further takings of Arkansas taxpayers' property without the taxpayers being given adequate pre-deprivation notice, and foreclosing any chance the taxpayers have to redeem wrongfully taken property where the State admits making a mistake in notifying the taxpayers before the taking.

Mr. Mays and the Yedea Trust ask that this Court grant its petition for a writ of certiorari to reverse the decision of the Supreme Court of Arkansas to bring Arkansas law in conformity with this Court's decisions in *Mullane* and *Mathews*.

ARGUMENT

I. The decision of the Supreme Court of Arkansas conflicts with this Court's well-settled Fourteenth Amendment Due Process jurisprudence that requires States to do at least two things when the State confiscates a taxpayer's property: (1) provide adequate pre-deprivation notice to the taxpayer in order to give the taxpayer an opportunity to contest the taking, and (2) provide adequate post-deprivation procedures to remedy situations where the State makes a mistake.

Due process requires that deprivation of life, liberty or property by adjudication be preceded by notice and opportunity for a hearing appropriate to the nature of the case. *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 313 (1950). The fundamental requisite of due process of law is the opportunity to be heard. *Mullane*, 339 U.S. at 314

(citing *Grannis v. Ordean,* 234 U.S. 385, 394 (1914)). This right to be heard has little reality or worth unless one is informed that the matter is pending and can choose for himself whether to appear or default, acquiesce or contest. *Mullane,* 339 U.S. at 314. An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections. *Mullane*, 339 U.S. at 314, 315 (citing *Milliken v. Meyer,* 311 U.S. 457 (1940); *Grannis, supra*; *Priest v. Las Vegas,* 232 U.S. 604 (1914); *Roller v. Holly,* 176 U.S. 398 (1900)). The notice must be of such nature as to reasonably convey the required information, and it must afford a reasonable time for those interested to make their appearance. *Mullane*, 339 U.S. at 314 (citing *Grannis, Roller, supra*; *Goodrich v. Ferris*, 214 U.S. 71 (1909)). When a person is entitled to notice, process which is a mere gesture is not due process. *Mullane*, 339 U.S. at 315.

On its face, Arkansas statute 26-37-301 does not offend the Due Process Clause. Measured by the principles stated in *Mullane*, however, the way in which the Land Commissioner fulfills its duties under the statute falls far short of the requirements of due process. *Walker v. City of Hutchinson*, 352 U.S. 112, 116 (1956). The County Collector had the current address of the Yedea Trust on record and by law was required to certify an accurate address to the Land Commissioner. Appendix A-7, A-8; Ark. Code Ann. § 26-37-103(a)(2) (LEXIS 2000). By its own admission, the County Collector failed to provide an accurate address for the Yedea Trust to the Land Commissioner. A-7, A-8. The Supreme Court of Arkansas acknowledged this fact, but gave it short shrift by wrongfully accusing Mr. Walker of

failing to provide the County Collector with an accurate address for the trust. Appendix A-9, A-10. There is nothing in the record of this case that remotely supports the proposition that Mr. Walker did not provide the County Collector with a current address of the trust. In fact, an employee of the County Collector gave uncontroverted testimony that her office had a current address for the trust, but somehow botched the rather routine process of certifying the correct address to the Land Commissioner. Appendix A-4-A-10. Thus, the notice the Land Commissioner gave to the trust was a mere gesture not reasonably calculated to reach the trustee, Mr. Mays. *Mullane*, 339 U.S. at 319.

At the trial of this matter, the Land Commissioner did not rebut the testimony of the County Collector employee who stated that her office had the current address for the Yedea Trust since January 28, 1998, more than one month before the Land Commissioner delivered a certified letter to 1 Union National Plaza instead of 217 West Second. Appendix A-4-A-10. The Land Commissioner also admitted that it has access to the computer databases of the County Collector and that on occasion, the Land Commissioner verifies the addresses it receives from the County Collector with the addresses on the County Collector's databases. The Land Commissioner did not do that in this case, however, asserting that doing so would have been above and beyond its statutory duty. Both the trial court and the appellate court excused the Land Commissioner by holding that its only statutory duty was to send a certified letter to the address provided to it by the County Collector, regardless of the accuracy of the County Collector's certification. Appendix A-8-A-10, A-16-A-18, A-20-A-22. This is not the kind of pre-deprivation notice contemplated by *Mullane* and its progeny.

In light of the undisputed fact that the County Collector certified the wrong address to the Land Commissioner and the Land Commissioner relied on that wrong address, the state trial court and appellate court should have analyzed Ark. Code Ann. § 26-37-301 (LEXIS 2000) under the framework enunciated by this Court in *Mathews v. Eldridge*, 424 U.S. 319 (1976), to determine whether adequate post-deprivation procedures were in place to cure situations where the State makes a mistake. Neither court cited *Mathews* and neither court analyzed this case under the *Mathews* framework. The *Mathews* framework consists of three components: (1) the private interest that will be affected by the official action; (2) the risk an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional procedural safeguards; and (3) the government's interest, including the fiscal and administrative burdens that the additional or substitute procedures would entail. *Mathews*, 424 U.S. at 334-35.

Section 26-37-301 as applied in this case fails to comport with the *Mathews* factors. First, there is no question that a taxpayer's interest in his or her property is a paramount interest protected by the Due Process Clause of the Fourteenth Amendment. Second, the facts of this case show in a searing fashion that the way the Land Commissioner's office is supposedly complying with Section 26-37-301 creates a considerable risk of an erroneous deprivation because the office does not verify that it has the correct taxpayer's address even though it has the technological capability of doing so and actually does so when it chooses. Third, the fiscal and administrative burden in verifying the addresses certified to it by the County Collector with the addresses listed in the County Collector's computer databases would be

negligible because the Land Commissioner is doing that very thing now-it simply chooses to do so sometimes and at other times it does not.

In sum, requiring the Land Commissioner to do in each case what it already does in some cases is not only good government policy, it is required by the Due Process Clause to insure that no taxpayer has to suffer what Mr. Walker has suffered, the taking of their real property with no notice.

II. This case involves a question of exceptional importance in that if the decision of the Supreme Court of Arkansas is not reversed, Arkansas taxpayers' property could be seized by the State without the State having to provide adequate pre-deprivation notice and without the State providing adequate post-deprivation procedures to remedy situations where the State makes a mistake.

One of the most consequential things a government can do is take the private real property of one of its taxpayers. The framers of the United States Constitution knew this and wrote not one, but two due process clauses into the text of this nation's governing charter to prevent such a taking without adequate procedural safeguards in place to insure the taxpayer would have an opportunity to contest the taking. U.S. Const. amend. V; U.S. Const. amend. XIV, § 1. The textual due process protections found in the Fifth and Fourteenth Amendments were given robust meaning in *Mullane*, *Mathews*, and their progeny. The Supreme Court of Arkansas did not show fidelity to *Mullane* and *Mathews*.

The Arkansas high court acknowledged the error committed by the County Collector and acknowledged that the

Land Commissioner relied on the County Collector's error. Nevertheless, the Arkansas court ratified this comedy of errors by blithely stating that the Land Commissioner has no duty "to take every step possible to see that the notice letter arrives in the property owner's hand." Appendix A-10. While the Land Commissioner may not be required to take *every step possible* to notify the property owner before selling the owner's land, the decisions of this Court require the Land Commissioner to do more than turn a blind eye to the taxpayer's correct address instead of relying on an erroneous one, particularly when all the Land Commissioner has to do to verify the correct address is to type a simple query into the agency's own computer system.

Review of the Supreme Court of Arkansas' decision in this case through a writ of certiorari will yield a result that comports with *Mullane* and *Mathews* and provide the protection to Arkansas taxpayers intended by the Fourteenth Amendment Due Process Clause. For all the foregoing reasons, Mr. Mays and the Yedea Trust respectfully requests that this Court grant this petition for a writ of certiorari.

Respectfully submitted,

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SUPREME COURT OF ARKANSAS
No. 03-798

RICHARD MAYS, TRUSTEE, IN HIS OFFICIAL CAPACITY; AND THE YEDEA TRUST, APPELLANTS, VS. ST. PAT PROPERTIES, LLC; AND CHARLIE DANIELS, STATE LAND COMMISSIONER, APPELLEES,	Opinion Delivered **May 20, 2004** APPEAL FROM THE PULASKI COUNTY CIRCUIT COURT, NO. CR-2002-548-B, HON. MACKIE M. PIERCE, JUDGE, *AFFIRMED.*

RAY THORNTON, Associate Justice

This appeal involves the validity of a sale of tax-delinquent land. Appellant, Richard Mays, trustee for the Yedea Trust, appeals a judgment of quiet title entered by the Pulaski County Circuit Court in favor of appellees, St. Pat's Properties, LLC, and Charlie Daniels, the Commissioner of State Lands ("Commissioner"). On appeal, appellant makes three allegations of error. We affirm the trial court's rulings.

In the early 1980's, Woodson Walker established the Yedea Trust for his then-minor children and named Richard Mays as the trustee. In 1989, the trust acquired a tract of land in Little Rock. The owner of record for the property was the Yedea Trust, Richard Mays, trustee, c/o Walker, Roaf, Campbell, Ivory & Dunklin, 1 Union National Plaza, #990, Little Rock, Arkansas, 72201. Taxes

were not paid on the land for the years of 1996, 1997, and 1998.

In 1998, Mr. Walker and his law firm moved from the Union National Bank Building to an office on 217 West Second Street in Little Rock. At this time, the law firm grew smaller as individual member attorneys started private practices. Appellant testified that he believed the trust was dissolved on or about the time that the law firm moved from the Union Building.

On February 22, 1999, the Pulaski County Collector, Assessor, and Recorder certified the Little Rock property to the Commissioner for non-payment of taxes for 1996, 1997, and 1998. On April 29, 1999, the Commissioner mailed a notice letter to appellant by certified mail, return receipt requested. The notice was sent to the certified address at appellant's former law firm in the Union National Bank Building. The letter stated that the property would be sold at public auction on May 1, 2001, if all taxes, penalties, interest, and costs were not paid by that date. The return receipt card was dated May 3, 1999, and was returned to the Commissioner's office bearing the purported signature of appellant's former law partner, Sheila F. Campbell. Ms. Campbell denies ever signing the card. The original receipt card with the signature was not produced.

Taxes remained delinquent on the property. On April 23, 2001, eight days prior to the sale, the Commissioner published a notice of sale of the property at public auction in the *Arkansas Democrat-Gazette*. The notice in the newspaper contained a description of the property at issue. The sale occurred as scheduled on May 1, 2001, and appellee bid $19,000.00 plus taxes, penalties, interest, and

costs, for a total of $19,081.16. Appellee purchased the property.

The thirty-day redemption period passed, and appellant failed to redeem the property during that redemption period. After the expiration of the redemption period, the Commissioner issued a limited-warranty deed to appellee, who recorded the deed on June 12, 2001.

On June 28, 2001, appellee filed a petition to quiet title to the property. On February 23, 2002, appellant filed a separate petition to set aside tax title conveyance to appellee and to quiet title. This petition was amended on September 20, 2002. The two suits were consolidated, and on October 2, 2002, the case was tried in Pulaski County Circuit Court.

By letter order, the trial court granted appellees' petition to quiet title, ruling that appellant was the record owner of the property; that his former law firm's address was the address of record; that the "[t]he evidence is clear that the Land Commissioner's office complied with all statutory requirements" regarding notice of the sale; that notice to appellant personally is not required by the statute; that the statutes do not require that notice be sent to the beneficiaries; and that Ark. Code Ann. § 26-37-301(a) does not violate the due-process clauses of the United States and Arkansas Constitutions. On December 31, 2002, a judgment of quiet title was entered in favor of appellees. From this order, appellant filed his appeal.

For his first point on appeal, appellant argues that the Commissioner published an incorrect legal description of the Little Rock property. Specifically, appellant contends that he was not given adequate notice of the sale because the Commissioner used an abbreviated land description of

the land, thereby resulting in a *void ab initio* deed after such a publication. Further, appellant argues that the publication was an *ultra vires* act and "effectively divested the trial court of any authority to enforce the actions of the Commissioner[.]"

Appellant admits in his brief that this argument was raised for the first time on appeal. We have repeatedly held that we will not consider arguments raised for the first time on appeal. *Ford Motor Co. v. Arkansas Motor Vehicle Comm'n*, ___ Ark. ___, ___ S.W.3d ___ (April 29, 2004); *South Central Ark. Elec. Coop. v. Buck*, 354 Ark. ___, 117 S.W.3d 591 (2003); *Arkansas Blue Cross & Blue Shield v. Hicks*, 349 Ark. 269, 78 S.W.3d 58 (2002).

Accordingly, based upon our well-established precedent, and because appellant admits on appeal that his argument was not raised to the trial court, we hold that this issue was not preserved for appellate review, and we are barred from reaching the merits of appellant's first point on appeal.

For his second point on appeal, appellant argues that he was not provided with adequate notice as required by Ark. Code Ann. § 23-37-301 (Repl. 1997). Specifically, appellant contends that Pulaski County failed to provide the correct "last known address," pursuant to Ark. Code Ann. § 23-37-101 (Repl. 1997), to the Commissioner, notwithstanding that his current address was contained in the files of the county collector's office when it certified the delinquent-land list to the Commissioner.

The issue of notice given to the owner of tax-delinquent land is a matter of statutory interpretation. We review issues of statutory interpretation *de novo*, as it is for this court to decide what a statute means. *Mack v.*

Brazil, Adlong, & Winningham, PLC, ___ Ark. ___, ___ S.W.3d ___ (April 15, 2004). In this respect, we are not bound by the trial court's decision; however, in the absence of a showing that the trial court erred, its interpretation will be accepted as correct on appeal. *Id.* A statute is to be given its plain meaning. *City of Dover v. City of Russellville,* 353 Ark. 299, 100 S.W.3d 689 (2003).

Arkansas Code Annotated § 26-37-101 *et seq.* (Repl. 1997) sets forth the procedure governing the forfeiture and sale of tax-delinquent land. Arkansas Code Annotated § 26-37-101 provides for the transfer of tax-delinquent lands to the Commissioner. The statute provides in pertinent part:

> (a)(1) All lands upon which the taxes have not been paid for one (1) year following the date the taxes were due, October 10, shall be forfeited to the State of Arkansas and transmitted by certification to the Commissioner of State Lands for collection or sale.
>
> (2) No tax-delinquent lands shall be sold at the county level.
>
> (b) The county collector shall hold all tax-delinquent lands in the county for one (1) year after the date of delinquency, and, if the lands are not redeemed by the certification date, which shall be no later than July 1 of the following year, *the collector shall transmit it to the state by certification, after notice as provided in this chapter, indicating all taxes, penalties, interest, and costs due and the name and last known address of the owner of record of the tax-delinquent lands.*

Id. (emphasis added).

Prior to certification to the Commissioner, the county assessor shall "[v]erify the name and last known address of the owner of record of the tax-delinquent land[.]" Ark. Code Ann. § 26-37-103(a)(2) (Repl. 1997).

Once the Commissioner's office receives a list of the tax-delinquent land, the Commissioner is charged with the duty to provide notice to the owner of his delinquency. Arkansas Code Annotated § 26-37-301, which provides for notice to the landowner, provides in pertinent part:

> (a)(1) Subsequent to receiving tax-delinquent land, the Commissioner of State Lands shall notify the owner, *at the owner's last known address,* by certified mail, of the owner's right to redeem by paying all taxes, penalties, interest, and costs, including the cost of the notice.
>
> (2) All interested parties known to the Commissioner of State Lands shall receive notice of the sale from the Commissioner of State Lands in the same manner.
>
> (b) The notice to the owner or interested party shall also indicate that the tax-delinquent land will be sold if not redeemed prior to the date of sale. The notice shall also indicate the sale date, and that date shall be no earlier than two (2) years after the land is certified to the Commissioner of State Lands.
>
> (c) For the purposes of this section, the terms "owner" and "interested party" shall mean any person, firm, corporation, or partnership holding title to or interest in the property by virtue of a recorded instrument at the time of certification to the Commissioner of State Lands.
>
> (d) The Commissioner of State Lands shall not be required to notify, by certified mail or by any other

> means, any person, firm, corporation, or partnership whose title to or interest in the property is obtained subsequent to certification to the Commissioner of State Lands.

Id. (emphasis added).

In cases involving redemption of tax-delinquent lands, we have stated that strict compliance with the requirement of notice of the tax sales is required before an owner can be deprived of his or her property. *Tsann Kuen Enterprises Co. v. Campbell,* ___ Ark. ___, ___ S.W.3d ___ (Nov. 20, 2003); *Jones v. Double "D" Properties, Inc.,* 352 Ark. 39, 98 S.W.3d 405 (2003).

The crux of appellant's argument is that the Commissioner should have provided him with adequate notice because Pulaski County knew of his last known address. According to the testimony of Sandra Anthony, Delinquent Tax Enforcement Manager, the Pulaski County Collector's Office had two recent addresses of the Yedea Trust. At trial, the following colloquy occurred during direct examination of Ms. Anthony:

> Q: Did I ask you about a week ago to go into your computer program to see what was the most recent address according to your computer? Was it last week or the week before you were asked to do that?
>
> A: Right. Yes.
>
> Q: Last week?
>
> A: Yes.
>
> Q: And what did you find to be the most recent address for the Yedea Trust when you were asked to do that?

A: As of now?

Q: After the initial address, what was the address –

A: The initial – 217 West Second Street.

Q: And when did you – I believe I asked you to tell me by what date you had that information.

A: 1-28 of '98.

Q: So it's your testimony that at least by January 28, '98, you had received notice that the address for the Yedea Trust was no longer Number One Union National Plaza but was 217 West Second Street?

A: Correct. Ms. Anthony further testified that the original address for the Yedea Trust was the Union Building address, but there were two more recent addresses in the collector's computer. On re-cross examination, Ms. Anthony testified that the last known address for the Yedea Trust was changed back to the Union Building address. It is unclear from the record whether someone in the collector's office or the assessor's office rolled the address back.

Appellant contends that the last known address, as reflected by Ms. Anthony's testimony, was the Second Street address, and that address should have been certified by Pulaski County to the Commissioner. However, the last known address that was certified by Pulaski County to the Commissioner was the Union Building address. In other words, there was some confusion at the county level as to the last known address. The Commissioner sent notice to the last known address that was made available to him by certification.

We addressed a similar problem in *Tsann Kuen, supra,* where the appellant in that case failed to notify the

tax collector that it had changed its address. In *Tsann,* we cited *Jones, supra,* for the proposition that the taxpayer has a duty to keep the collector's office advised of his or her change of address. We stated:

> Tsann Kuen ignores the fact that its lack of notice was due to its own failure to notify the tax collector that it had changed its address. As previously stated, [Ark. Code Ann.] § 26-35-705 provides, in part, that "[i]n the event that the address of the taxpayer changes, the taxpayer has an obligation to furnish the correct address."
>
> In *Jones, supra,* we noted that [Ark. Code Ann.] § 26-37-301 "does not require the Land Commissioner to take every step possible to see that the letter arrives in the property owner's hand; it only requires that the Commissioner 'shall notify the owner, at the owner's last known address, by certified mail, of the owner's right to redeem [the property.]'" *Jones,* 352 Ark. at 45, 98 S.W.3d 405.

Tsann Kuen, supra.

In the present case, there are two reasons that appellant's argument fails. First, the county assessor's verification of appellant's last known address, pursuant to Ark. Code Ann. § 26-37-103(a)(2), before certifying appellant's tax-delinquent land to the Commissioner, did not disclose a more current address. Second, it appears that appellant failed to provide his correct change of address to the Pulaski County Collector. If he had contacted the office, he could have cleared up any confusion as to which address was his last known address. Under Ark. Code Ann. § 26-35-705, appellant had "the obligation to furnish the correct address," and apparently, appellant failed to meet that obligation. As a consequence of appellant's inaction, the

Commissioner was left with the address that had been given by the county office.

We note our holding in *Jones, supra,* where we construed Ark. Code Ann. § 26-37-301 to mean that the Commissioner is not required "to take every step possible to see that the [notice] letter arrives in the property owner's hand[.]" *Jones, supra.* We note that once the notice letter was sent, it was not returned to the Commissioner. Arkansas Code Annotated § 26-37-301 only requires one notice by the Commissioner. *See Wilson v. Daniels,* 64 Ark. App. 181, 980 S.W.2d 274 (1998).

Therefore, we hold that the Commissioner, subsequent to receiving the tax-delinquent land, sent a certified notice to appellant's last known address. Based upon our standard of review regarding the rules of statutory construction, as well as our case law involving tax-delinquent land, we conclude that the trial court properly granted appellee's petition to quiet title. Accordingly, we affirm the trial court on this point.

For his third point on appeal, appellant argues that the trial court abused its discretion by admitting a certified copy of a postal return receipt. Specifically, appellant contends that the trial court should have excluded this document under Ark. R. Evid. 1002 and 1003.

The best evidence rule requires that to prove the content of a writing, the original writing must be submitted, unless otherwise provided in the rules adopted by the Arkansas Supreme Court. Ark. R. Evid. 1002. However, a duplicate is admissible to the same extent as an original, unless a question is raised as to the authenticity or continuing effectiveness of the original, or if it would be unfair to admit the duplicate. Ark. R. Evid. 1003.

We have consistently held that trial courts are accorded wide discretion in evidentiary rulings, and we will not reverse such rulings absent a manifest abuse of discretion. *Jackson v. Buchman,* 338 Ark. 467, 471, 996 S.W.2d 30, 33 (1999).

At trial, appellee introduced a certified copy of a certified mail return receipt card purportedly bearing the signature of Ms. Campbell. The card was verified by Ms. Lisa Pelton, an employee of the Commissioner and a custodian of land-sales records. Ms. Pelton testified that the certified copy was a true and accurate copy of the of the notice of delinquent real estate taxes that was maintained in the Commissioner's office in the normal course of business. She further testified that it was a true and accurate copy of the notice mailed on April 28, 1999, to appellant. The Commissioner did not produce the original at trial.

After hearing objections and arguments, the trial court ruled:

> Under Rule 1003, admissibility of a duplicate, is – well, it is admissible to the same extent as an original unless, one, a genuine question is raised as to the authenticity or continuing effectiveness of the original or in circumstances it would be unfair to admit the duplicate in lieu of the original.

I don't see that either one of those two provisions apply. I will overrule the objection as to the admissibility due to it being a duplicate. Appellant argues that this certified copy should not have been admitted because "the only proof that notice was sent by certified mail was a purported photocopy of the postal return receipt allegedly

signed by Sheila Campbell." At trial, Ms. Campbell testified that she did not sign the certified mail receipt.

Appellant's contention that the duplicate should not have been admitted because the questioning of the authenticity of Ms. Campbell's signature should fail. The trial court made the following ruling:

The document speaks for itself. It's addressed to Richard Mays, trustee, care of Walker, Roaf, *et al.* I've heard the address. I know what it says. Here, the copy of the return receipt card was not admitted to prove the signature of Ms. Campbell, but rather it was admitted to prove that notice had been mailed and was received at the last known address of the record owner. The copy of the return receipt contains the Union Building address, and the fact that the notice had been received at that address is shown by the return receipt. The required proof is that notice was mailed to that address and was received by someone at that address. The photocopy of the return receipt was sufficient to establish those facts. The authenticity of the signature is not at issue. Thus, under Ark. Code Ann. § 26-37-301, the Commissioner fulfilled his duties by sending notice to the address.

For these reasons, we hold that the trial court properly admitted the copy of the certified mail receipt. Accordingly, we affirm the trial court's ruling on the admissibility of this evidence.

Affirmed.

IN THE CIRCUIT COURT OF
PULASKI COUNTY, ARKANSAS
EQUITY DIVISION
SEVENTEENTH DIVISION

ST. PAT PROPERTIES, LLC	**PLAINTIFF/ COUNTER-DEFENDANT**
vs.	**NO. EQT 2001 3371**
RICHARD MAYS, In His Official Capacity as Trustee of the Yedea Trust, and THE YEDEA TRUST	**DEFENDANTS/ COUNTER-PLAINTIFFS**
RICHARD MAYS, As Trustee of Yedea Trust and YEDEA TRUST	**THIRD PARTY PLAINTIFFS**
vs.	
CHARLES DANIELS, Commissioner of State Lands	**THIRD PARTY DEFENDANT**

JUDGMENT OF QUIET TITLE

(Filed Dec. 31, 2002)

On the 2nd day of October, 2002, came on the above matter for trial on the Petition of St. Pat Properties, LLC, for quiet title, and the counterclaim and third party complaint of Richard Mays, Trustee of the Yedea Trust and The Yedea Trust; Plaintiff, St. Pat Properties, LLC, appearing by and through Keith Wingfield, its authorized representative, and by and through its attorneys, Montgomery, Adams & Wyatt, PLC, and Defendants Richard Mays, as Trustee of the Yedea Trust, in person and by and through his attorney,

Woodson D. Walker, and The Yedea Trust, appearing by and through Richard Mays, Trustee, and its attorneys, Woodson D. Walker and George Ivory, and Third Party Defendant, Charlie Daniels, Commissioner of State Lands, appearing by and through his authorized representative Steve Hollowell, and by and through his attorney, Carol L. Lincoln; and from the testimony of witnesses presented by the parties, exhibits introduced of record, arguments of counsel and other matters properly before the Court, the Court being well and sufficiently advised as to the facts and law in the premises doth find:

1. This matter involves land located on Country Oaks Drive, Little Rock, Pulaski County, Arkansas, more particularly described as:

> Part of the Northwest Quarter of the Southwest Quarter; and part of the Northwest Quarter of the Northeast Quarter of the Southwest Quarter and the South 108 feet of the Northeast Quarter of the Northeast Quarter of the Southwest Quarter, all in Section 2, Township 1 North, Range 14 West, Pulaski County, Arkansas, more particularly described as follows: Beginning at the Northwest corner of the NW¼ of the SW¼ of said Section 2; thence South 0 degrees 09 minutes 49 seconds West 586.52 feet; thence South 85 degrees 36 minutes 07 seconds East 603.24 feet to the center of a road right-of-way; thence along the center of said road right-of-way on chord distances, North 0 degrees 21 minutes 47 seconds West 98.61 feet; thence North 21 degrees 35 minutes 10 seconds East 81.52 feet; thence departing the center of said road right-of-way North 31 degrees 11 minutes 20 seconds West 535.84 feet; thence

South 89 degrees 59 minutes 50 seconds West 355.00 feet to the point of beginning, LESS AND EXCEPT, that part of subject property in the proposed road as shown on the survey by William F. Davis, Sr., dated November 10, 1980, together with a right-of-way for ingress and egress over 50' right-of-way the centerline of which is described as follows: Starting at the Southeast corner of the NW¼ of the NE¼ of said SW¼; thence South 89 degrees 58 minutes 20 seconds East for a distance of 659.29 feet to the West right-of-way of Stewart Road; thence North along said right-of-way a distance of 54 feet to the point of beginning of the centerline of the right-of-way for Country Oaks Drive; said right-of-way being 25 feet each side of the following chord tangents: North 89 degrees 58 minutes 20 seconds West 659.26 feet; South 89 degrees 00 minutes 00 seconds West 197.09 feet; North 60 degrees 33 minutes 15 seconds West 232.34 feet; North 40 degrees 15 minutes 55 seconds West 78.00 feet; North 63 degrees 10 minutes 35 seconds West 166.45 feet; North 81 degrees 15 minutes 57 seconds West 60.92 feet; North 81 degrees 21 minutes 21 seconds West 137.93 feet; South 85 degrees 28 minutes 13 seconds West 174.86 feet; South 65 degrees 50 minutes 07 seconds West 125.37 feet; South 53 degrees 26 minutes 51 seconds West 111.19 feet; South 21 degrees 35 minutes 10 seconds West 81.52 feet; South 0 degrees 21 minutes 47 seconds East 477.20 feet to the center of a cul-de-sac with a radius of 50 feet and the end of Country Oaks Drive.

3. On May 1, 2001, Plaintiff purchased said property from the office of Land Commissioner at public auction for the price of $19,000.00; Plaintiff also agreed

to pay the real estate taxes then due and owing in the sum of $82.16.

4. The property was not redeemed within the thirty (30) day redemption period set forth in A.C.A. §26-37-203, and the Land Commissioner conveyed the property to Plaintiff by Limited Warranty Deed Number 133941, filed of record on June 12, 2001.

5. No one is in possession of said property adversely to Plaintiff, and no one other than Defendants is claiming title to said property adversely to Plaintiff.

6. Defendants Mays, as Trustee, and the Yedea Trust assert that the sale did not comply with the requirements of A.C.A. §26-37-301.

7. The testimony and exhibits introduced into evidence show that the owner of record of the subject property was The Yedea Trust, Richard Mays, Trustee, c/o Walker, Roaf, et al, 1 Union National Plaza, #990, Little Rock, Arkansas 72201; the Land Commissioner followed the Statutory requirements of A.C.A. §26-37-310(d) and sent notice by certified mail to the owner at that address; as shown on Plaintiff's Exhibit 11, the Certificate of the County Collector, Certificate of the Assessor and Certificate of Recorder, The Yedea Trust was the owner of record, and the records contained the address for said trust to be Richard Mays, Trustee, as set forth above; notice was sent to that address by the Land Commissioner; no other persona or entity entitled to receive notice was known to the Land Commissioner.

8. The Land Commissioner published notice pursuant to A.C.A. §21-37-201 on April 23, 2001, eight (8) days prior to the actual sale date of May 1, 2001; said

notice was in compliance with the statutory requirements.

9. Defendants also assert that Defendant Mays, as Trustee, did not receive personal notice; as noted above, the evidence shows that, pursuant to statute, the notice was sent by certified mail to the last known address of the record owner; the Land Commissioner complied with the statutory requirements.

10. Defendants also argue that the beneficiaries of the Yedea Trust did not receive notice and were entitled to such notice; the applicable law, A.C.A. §26-37-301(c), requires notice be provided to an owner or an interested party, which are defined as one which holds title to or an interest in the subject property by virtue of a recorded instrument when the property is certified to the State as delinquent; as set forth above, The Yedea Trust, Richard Mays, as Trustee, was the owner of record at that time; no document showing anyone else having ownership of or an interest in the property was introduced into evidence; notice was mailed to The Yedea Trust, the owner of record.

11. Defendants also assert that A.C.A. §21-37-301(a) is an unconstitutional violation of the 14th Amendment to the U.S. Constitution or violates the Arkansas Constitution; the evidence which was introduced does not show that the statute is unconstitutional, and Defendants' claim of unconstitutionality is denied.

12. Defendants' counterclaim should be and hereby is dismissed.

13. The sale to Plaintiff should be and hereby is confirmed, and title to the above described property

should be and hereby is quieted in Plaintiff, St. Pat Properties, LLC.

IT IS, THEREFORE, FOUND, CONSIDERED AND ADJUDGED that Plaintiff's Complaint is granted, that title in and to the property described herein is hereby quieted in and to Plaintiff, that Defendants' counterclaim is denied and dismissed, and any claims against the property asserted by Defendants are hereby canceled and declared nullities, and title to the property should be confirmed, quieted and vested in Plaintiff against the existing or potential claims of said Defendants.

/s/ Mackie M. Pierce
JUDGE

12-31-02
Date

Judge Pierce

Date 12-31-02 Div. 17

Jury Trial ☐
Bench Trial ☒
Non-Trial ☐

Prepared by:

/s/ Orin Eddy Montgomery
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(82109)
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[SEAL]

MACKIE M. PIERCE
Circuit Judge
Sixth Judicial District
Seventeenth Division
Pulaski and Perry Counties

Rose Sykes
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December 12, 2002

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Mr. Carol L. Lincoln
Attorney at Law
Office of Commissioner of State Lands
State Capitol, Ste. 109
Little Rock, Arkansas 72201

Re: St. Pat Properties v. Richard Mays, as Trustee of the Yedea Trust, and The Yedea Trust; Richard Mays, as Trustee of Yedea Trust and Yedea Trust v. Charlie Daniels, Commissioner of State Lands and

St. Pat Properties, LLC; Pulaski Circuit No. EQT 2001-3371

Dear Ms. Lincoln and Gentlemen:

Pending before the Court is Plaintiff's Petition to Quiet Title. Defendants have answered and filed a counter-claim against Charlie Daniels, State Land Commissioner and against Plaintiff, St. Pat Properties, asking that the tax title conveyance be set aside and that title to the property in dispute be quieted in them.

On May 1, 2001, Plaintiff bid the sum of $19,000.00 for the property in question and agreed to pay the taxes then due and owing in the sum of $82.16. When the property was not redeemed within the thirty (30) day period for redemption pursuant to Ark. Code Annotated, §26-37-203, Charlie Daniels, Commissioner of State Lands, on June 5, 2001, issued a Limited Warranty Deed No. 133941 for the forfeited property sold to Plaintiff. On June 28, 2001, Plaintiff filed this action to quiet title.

Defendants argue that the sale was not conducted in conformity with state statute, specifically A.C.A. § 26-37-301, in that Mr. Richard Mays, trustee of the trust, was not properly served. The evidence is to the contrary. The evidence is clear that the Land Commissioner's office complied with all statutory requirements.

The record owner of the property was the Yedea Trust, Richard Mays, trustee, C/O Walker, Roaf, et al, 1 Union National Plaza, #990, Little Rock, Arkansas 72201. The certified mail notice to the record owner was sent to the last known address of that owner, i.e., the address set forth above. The certified mail notice was sent pursuant to statute. A.C.A. §26-37-310(d) specifically recites that "the

Land Commissioner shall not be required to notify, by certified mail or by any other means, any person, firm, corporation, or partnership whose title to or interest in the property is obtained subsequent to the certification to the Commissioner of State Lands." Plaintiff's Exhibit 11 was the Certificate of the County Collector, Certificate of the Assessor and Certificate of Recorder reflecting Yedea Trust as owner, Richard Mays as Trustee, in care of the Walker Roaf Law Firm at 1 Union Plaza, #990, Little Rock, Arkansas 72201. This was the address to which the certified mail notice was sent. No person other than Richard Mays as trustee was known to the Commissioner of State Lands in order to be entitled to receive notice of the sale from the Commissioner. See A.C.A. § 26-37-301(a)(2).

Once the land in question had been transferred to the Land Commissioner, a notice was published pursuant to A.C.A. §26-37-201. See Plaintiff's Exhibit 10. The notice was first published April 23, 2001. This was eight (8) days prior to the sale date of May 1, 2001. There is no statutory requirement as to the time prior to sale in which the notice must be published. The Notice of Public Sale in Exhibit 11 clearly provided the sale date of May 1, 2001, at 10:00 a.m. When there was no redemption of this property within thirty (30) days of the sale, a limited warranty deed was issued to Plaintiff.

Defendants argue that no notice was provided to Mr. Mays personally. This is not required by statute. All that is required is that the notice be sent to the last known address of the owner. The Yedea Trust, Richard Mays, Trustee, was the record owner. The last known address was that of the Walker Roaf Law Firm. The certified notice was in fact mailed. Ms. Sheila Campbell testified

that she did not sign the certified mail receipt card as reflected in Plaintiff's Exhibit 5. Ms. Campbell testified that she was not at that address of 1 Union Plaza, #990, on May 3, 1999.

A.C.A. § 26-37-301(a)(1) does not require restricted delivery to the addressee. It only requires that the notice be sent by certified mail to the owner's last known address. This is what was done in this case. See Plaintiff's Exhibits 4, 5, 7 and 26. The Land Commissioner complied with the statute.

Defendant alleges that the beneficiaries of the trust did not receive notice of the impending tax sale. They are not entitled to notice pursuant to A.C.A. § 26-37-301(c). Section (c) provides that "owner" or "interested party" shall mean any person, firm, corporation or partnership holding title to or interest in the property by virtue of a recorded instrument at the time of certification to the Commissioner of State Lands. At the time of certification, the record owner was the Yedea Trust, Richard Mays, Trustee. No copy of the trust document was ever introduced to show who the beneficiaries of the trust are or were. The property in question was not owned by the beneficiaries, be they minors or persons suffering from a disability. The property was owned by the trust. See Plaintiff's Exhibit 24.

The Court also finds that A.C.A. § 26-37-301(a) does not violate the due process clause of the 14th Amendment to the United States Constitution nor does the statute violate the Arkansas Constitution. Defendants' Amended Petition to Set Aside Tax Title Conveyance and to Quiet Title is hereby denied and dismissed.

Plaintiff's Petition to Quiet Title is granted for the reasons set forth herein. Mr. Montgomery will please prepare a precedent and forward same to the Court with a copy to opposing counsel. Opposing counsel will have seven (7) days to object to the form of the precedent.

Sincerely,

/s/ Mackie M. Pierce
Mackie M. Pierce

IN CIRCUIT COURT OF
PULASKI COUNTY, ARKANSAS
SEVENTEENTH DIVISION

ST. PAT PROPERTIES, LLC **PLAINTIFF**

vs. Case No. EQT 2001-3371

RICHARD MAYS, In His Official Capacity as Trustee of the Yedea Trust, and THE YEDEA TRUST **DEFENDANTS**

RICHARD MAYS, as Trustee of Yedea Trust and YEDEA TRUST **PLAINTIFFS**

VS

CHARLIE DANIELS, Commissioner Of State Lands; ST. PAT PROPERTIES, LLC **DEFENDANTS**

AMENDED PETITION TO SET ASIDE TAX TITLE CONVEYANCE AND TO QUIET TITLE

(FILED Sep. 20, 2002)

Comes the Plaintiff, Richard Mays, as Trustee of Yedea Trust and Yedea Trust, by and through its attorney, George S. Ivory, Jr., and for his petition to set-aside a tax title conveyance and petition to quiet title, alleges and states, that:

I. Jurisdiction and Venue

1. Jurisdiction of this court is involved pursuant to ACA§26-37-203(b)(1) (contesting the validity of the tax title conveyance within two (2) years of the conveyance); ACA§26-37-204(a) (purchaser entitled to reimbursement of moneys paid); ACA§26-37-30I(a) (Notice to owner), and ACA§26-37-301(c) (owner shall mean any person holding title by virtue of a recorded instrument).

2. Venue lies in this Court because the subject property is located within this county, and is described as follows:

> Part of the Northwest Quarter of the Southwest Quarter; and part of the Northwest Quarter of the Northeast Quarter of the Southwest Quarter And South 108 feet of the Northeast Quarter of the Northeast Quarter of the Southwest Quarter, all in Section 2, Township 1 North, Range 14 West Pulaski County Arkansas, more particularly described as follows:
>
> Beginning at the Northwest corner of the NW¼ of the SW ¼ of said Section 2; thence South 0 degrees 09 minutes 49 seconds West 98.61 feet, Thence North 21 degrees 35 minutes 10 seconds East 81 feet; thence departing the Center of said road right-of-way North 31 degrees 11 minutes 20 seconds West 353.84 feet; thence South 89 degrees 59 minutes 50 seconds West 355.00 feet to the point of beginning, LESS shown on the survey by William F. Davis, Sr., dated November 10, 1980 together with a right-of-way for ingress and egress over 50' right-of-way the centerline of which is described as follows: Starting at the Southeast corner of the NW¼ of the NE¼ of said SW¼; thence South 89 degrees 58 minutes 20 seconds East for a distance of 659.29 feet to the West right-of-way of Stewart Road; thence North along said right-of-way a distance of 54 feet to the point of beginning of the centerline of the right-of-way for Country Oaks Drive; said right-of-way being 25 beet each side of the following chord tangents: North 89 degrees 58 minutes 20 seconds West 659.26 feet; South 89 degrees 00 minutes 00 seconds West 197.09 feet North 60 degrees 33 minutes 15 seconds West 232.34 feet;

North 40 degrees 15 minutes 55 seconds West 78.00 feet; North 63 degrees 10 minutes 35 seconds West 166.45 feet; North 81 degrees 15 minutes 57 seconds West 60.92 feet; North 81 degrees 21 minutes 21 seconds West 137.93 feet; South 85 degrees 28 minutes 13 seconds West 174.86 feet South 65 degrees 50 minutes 07 seconds West 125.37 feet; South 58 degrees 26 minutes 51 seconds West 111.19 feet; South 21 degrees 35 minutes 10 seconds West 81.52 feet; South 0 degrees 21 minutes 47 seconds East 477.20 feet to the center of a cul-de-sac with a radius of 50 feet at the end of Country Oaks Drive.

II. The Parties and Purported Interest

3. The Plaintiff, Yedea Trust, is the owner as contemplated in ACA§26-37-301(a) and (c) of the subject property, pursuant to a warranty deed filed of record on June 26, 1989.

4. The separate defendant, Charlie Daniels, Commissioner of State Lands (hereinafter Commissioner) is an agent of the State of Arkansas, who sold the lands at a tax sale on or about May 1, 2001, to separate defendant St. Pat Properties, LLC based on a certification from the Pulaski County collector allegedly for delinquent taxes for the year 1996-1999. A copy of the Notice of Delinquent Real Estate Taxes is attached hereto as Exhibit 1.

5. The separate defendant St. Pat Properties, LLC, is an Arkansas corporation, whose address is 17 Portland Road, Little Rock, Arkansas 72212; and whose agent for service of process is Keith Wingfield; and who claims title

to the subject property by virtue of the Limited Warranty Deed from the Commissioner, attached as Exhibit 1.

II. Errors committed which cause a cloud on Plaintiffs title

8. Separate defendant State Land Commissioner failed to comply with the requirements established in ACA§26-37-301(a), to provide notice of the sale to the "owner" at his last known address.

9. The Commissioner of Land attempted to serve notice on "Richard Mays as trustee of the Yedea Trust" by certified mail on April 29, 1999, at #1 Union National Plaza, Suite 990, Little Rock, Arkansas 72201 without "Restricted Delivery" (see attached exhibit 2).

10. The return receipt signed May 3, 1999 was allegedly signed by a Sheila Campbell, however Sheila Campbell, an attorney denies that she ever received or signed the receipt (See Campbell affidavit attached as exhibit 3).

11. Richard Mays as Trustee for the Yedea Trust also denies ever being properly served in accordance with ACA§26-37-30(a).

12. ACA§26-37-30(a) violates the due process clause of the 14th Amendment to the United States Constitution in that the statute is vague, arbitrary and capricious.

13. ACA§26-37-30(a) also violates the Arkansas Constitution in that it amounts to a taking without just compensation.

14. The separate defendant St. Pat Properties paid the Commissioner the sum of $19,000.00 for its deed, and

expended another $81.16 for taxes, penalties, interest and costs then remaining unpaid on said property. The total expenditures of St. Pat Properties is $19,081.16.

III. Compliance by Plaintiff and Relief Requested

15. The Plaintiff was and is an owner as contemplated by ACA§26-37-301(a). The State Land Commissioner's failure to properly serve Richard Mays, as trustee who was the proper agent for service, and the return receipt not being signed by Richard Mays or his authorized agent failed the requirements imposed on the commissioner by ACA§26-37-301(a).

16. The Commissioner by his failure to comply with ACA§26-37-301(a), lacked the authority to sell the property, and the alleged tax sale is null and void.

17. The Plaintiff brings this action in compliance with the constraints imposed on him by ACA§26-37-203(b)(1), which mandates that action contesting the validity of tax sale conveyances to be brought within two (2) years after the date of the conveyance.

18. The Plaintiff will upon request tender the sum of $19,081.16 to the Clerk of the Court, to be placed in its Registry, in compliance with ACA§26-37-204(a), which provides that the tax sale purchaser shall be entitled to reimbursement of moneys paid, which is the total sum of moneys paid by St. Pat Properties LLC.

IV. Disability of Trust Member

19. Plaintiff's restate and reallege the allegations in paragraphs 1 through 18 as fully set forth herein.

20. From 1995 through the present, Fwatala Walker has suffered from epilepsy and seizure disorders, which renders her of unsound mind, incompetent and unable to manage her own affairs.

21. Fwatala Walker remains under disability as set out in Ark. Code Ann. §§ 26-37-305 and 306.

22. Hope Walker, the natural mother of Fwatala Walker, who is petitioning to become guardian of Fwatala Walker, asserts the right to redeem the property.

23. Chike is a minor who suffers from a disability of minority in that he is currently sixteen years of age.

24. The Commissioner lacked the authority to sell the Property.

25. The alleged tax sale of the property is null and void.

V. Prayer

WHEREFORE, for the reasons and on the grounds stated hereinabove, the plaintiff prays as follows, that:

1. The Deed from the Commissioner to St. Pat Properties, LLC be set aside and be declared null and void, pursuant to ACA§26-37-203(b)(1), ACA§26-37-204(a) & (c) and ACA§26-37-301(a&c) and ACA§26-37-305.

2. The plaintiff be declared the owner of the subject property, and that title be quieted in him.

3. All claims of St. Pat Properties, LLC in and to the subject property be cancelled and declared a nullity.

4. The plaintiff recover all costs expended, a reasonable attorneys fee against all parties severally and jointly, and for all other legal, equitable and proper relief to which he may be justly entitled.

/s/ George S. Ivory
Respectfully submitted,
George S. Ivory, Jr.
Attorney for the Plaintiff
Ark. Bar # 83-006
806 West Second Street
Little Rock, AR 72201
(501) 372-0555
(501) 372-5485 Fax

CERTIFICATE OF SERVICE

I, George S. Ivory, Jr., hereby certify that a copy of the foregoing has been served on the following counsel of record by United States Mail on this 20th day of September 2002:

Orin Eddy Montgomery (#82109)
Montgomery, Adams & Wyatt, PLC
Attorney for Defendant
221 West Second, Suite 408
Little Rock, AR 72201

Carol L. Lincoln
Attorney for Defendant
State Capitol, Suite 109
Little Rock, AR 72201

Woodson Walker
Walker and Dunklin Law Firm
2020 South Broadway
Little Rock, AR 72203

/s/ George S. Ivory
George S. Ivory, Jr.

Ark. Code Ann. § 26-37-101. **Transfer of tax-delinquent lands.**

(a)(1) All lands upon which the taxes have not been paid for one (1) year following the date the taxes were due, October 10, shall be forfeited to the State of Arkansas and transmitted by certification to the Commissioner of State Lands for collection or sale.

(2) No tax-delinquent lands shall be sold at the county level.

(b) The county collector shall hold all tax-delinquent lands in the county for one (1) year after the date of delinquency, and, if the lands are not redeemed by the certification date, which shall be no later than July 1 of the following year, the collector shall transmit it to the state by certification, after notice as provided in this chapter, indicating all taxes, penalties, interest, and costs due and the name and last known address of the owner of record of the tax-delinquent lands.

(c) Upon receipt of the certification, title to the tax-delinquent lands shall vest in the State of Arkansas in care of the Commissioner of State Lands.

Ark. Code Ann. § 26-37-103. **Verification by county assessor.**

(a) Prior to certification to the Commissioner of State Lands, the county assessor shall:

(1) Verify the assessment to establish value on all parcels to be certified;

(2) Verify the name and last known address of the owner of record of the tax-delinquent land; and

(3) Determine whether the tax-delinquent land exists.

(b) If the land is found to be nonexistent, the county assessor shall remove the delinquent entry from the assessment rolls.

(c) No tax-delinquent lands shall be certified to the Commissioner of State Lands without the assessor's verification.

Ark. Code Ann. § 26-37-301. **Notice to owner.**

[EDITORS' NOTE: THE TEXT OF THIS SECTION IS EFFECTIVE UNTIL JANUARY 1, 2004, SEE BELOW SECTION FOR TEXT EFFECTIVE JANUARY 1, 2004.]

(a)(1) Subsequent to receiving tax-delinquent land, the Commissioner of State Lands shall notify the owner, at the owner's last known address, by certified mail, of the owner's right to redeem by paying all taxes, penalties, interest, and costs, including the cost of the notice.

(2) All interested parties known to the Commissioner of State Lands shall receive notice of the sale from the Commissioner of State Lands in the same manner.

(b) The notice to the owner or interested party shall also indicate that the tax-delinquent land will be sold if not redeemed prior to the date of sale. The notice shall also indicate the sale date, and that date shall be no earlier than two (2) years after the land is certified to the Commissioner of State Lands.

(c) For the purposes of this section, the terms "owner" and "interested party" shall mean any person, firm, corporation, or partnership holding title to or interest in the property by virtue of a recorded instrument at the time of certification to the Commissioner of State Lands.

(d) The Commissioner of State Lands shall not be required to notify, by certified mail or by any other means, any person, firm, corporation, or partnership whose title to or interest in the property is obtained subsequent to certification to the Commissioner of State Lands.

26-37-301. **Notice to owner.**

[EDITORS' NOTE: THE TEXT OF THIS SECTION IS EFFECTIVE JANUARY 1, 2004, SEE ABOVE SECTION FOR TEXT EFFECTIVE UNTIL JANUARY 1, 2004.]

(a)(1) Subsequent to receiving tax-delinquent land, the Commissioner of State Lands shall notify the owner, at the owner's last known address, by certified mail, of the owner's right to redeem by paying all taxes, penalties, interest, and costs, including the cost of the notice.

(2) All interested parties known to the Commissioner of State Lands shall receive notice of the sale from the Commissioner of State Lands in the same manner.

(b) The notice to the owner or interested party shall also indicate that the tax-delinquent land will be sold if not redeemed prior to the date of sale. The notice shall also indicate the sale date, and that date shall be no earlier than two (2) years after the land is certified to the Commissioner of State Lands.

(c) For the purposes of this section, the terms "owner" and "interested party" shall mean any person, firm, corporation, or partnership holding title to or interest in the property by virtue of a recorded instrument at the time of certification to the Commissioner of State Lands.

(d) The Commissioner of State Lands shall not be required to notify, by certified mail or by any other means, any person, firm, corporation, or partnership whose title to or interest in the property is obtained subsequent to certification to the Commissioner of State Lands.

(e)(1) If the Commissioner of State Lands fails to receive proof that the notice sent by certified mail under this section was received by the owner of a homestead, as defined under § *26-26-1118*(b), then the Commissioner of State Lands or his or her designee shall provide actual notice to the owner of a homestead, as defined under § *26-26-1118*(b), by personal service of process at least sixty (60) days before the date of sale.

(2) For purposes of this subsection, "owner of a homestead" means:

(A) Every owner if the homestead is owned by joint tenants; and

(B) Either the husband or the wife if the homestead is owned by tenants by the entirety.

(3) The owner of a homestead shall pay for the additional cost of the notice by personal service of process under this subsection.